IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6658 of 2002

With

SPECIAL CIVIL APPLICATION NO. 6659 OF 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

and

Hon'ble MR.JUSTICE K.A.PUJ

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

==========

RAMCHANDRA ART SILK YARN TRADING CO. & Others.

Versus

UNION OF INDIA

Appearance:

MR PARESH M DAVE for Petitioners.

MR DN PATEL for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

and

MR.JUSTICE K.A.PUJ

Date of decision: 13/08/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

Rule. Mr. D.N. Patel, learned Senior Standing Counsel for the Central Govt. waives service of Rule.

2. The petitioners imported Mixed Denier Flat Poly Yarn, B Grade at the Kandla Port in February 2000. The petitioners filed Bill of Entry on 1st February 2000 through their Customs House Agent for clearance of imported goods for home consumption. The petitioners supplied import documents like Bill of Lading, Invoice issued by foreign supplier, Packing List etc., along with the above Bill of Entry. The Deputy Commissioner, Customs, Kandla directed the petitioners and Customs House Agent on 14th February 2002 to segregate the yarns on the basis of weights and deniers on quantification. The petitioners and their agent contended that such separation or segregation was not possible nor was it required under the Customs Act and the assessment of the goods is to be made in the condition in which the goods were imported. However, since the Customs Authorities stuck to their stand the petitioners employed labourers and segregated the quantities of certain deniers of few consignments of the imported cargo.

3. The petitioners also similarly imported another consignment of similar goods vide Bill of Entry dated 6th January 2000. The same controversy ensued for the aforesaid consignment also. Ultimately, by common orders-in-original dated 3rd May 2000 for both the consignments, respondent No.3 Deputy Commissioner of Customs, Group VII, Kandla, enhanced the value of the imported goods on the basis of the Standing Order No. 7514/2000 and sought to charge higher duty on the imported goods. The petitioners filed appeals before the Commissioner (Appeals) at Ahmedabad. Those appeals came to be rejected by the appellate authority on 23rd November 2000 and the petitioners challenged the same before this Court by filing Special Civil Application No. 1276 of 2000 challenging the validity of the Standing Order as well as the orders passed by the 3rd respondent and the order passed by the appellate Commissioner. Ultimately, the said petitions came to be disposed of by judgment dated 4th April 2001, as reported in 2001(44) RLT 579, wherein this Court held that though the Standing Orders are not liable to be struck down as unconstitutional, they were to be read down by the concerned Customs Authorities purely as instructions or guidelines and not mandates or commands for being obeyed in each individual case of assessment before them. The Standing Orders are to be taken only as assistance in exercise of their quasi-judicial power of determining value for the purpose of levy of Customs Duty. Since

during the pendency of the petitions this Court had directed the petitioners to be provisionally assessed on the imported goods, while finally disposing of the petition this Court directed the respondents to regularly assess the petitioners on the goods imported by them for the Customs Duty.

4. That is how the respondent No.3 passed orders dated 14th August 2001 (Annexure 'B') and respondent No.4 passed order dated 29th August 2001 (Annexure 'C'). Aggrieved by the said orders, the petitioners preferred appeals before the Commissioner of Customs (Appeals). The Commissioner was pleased to allow the said appeals by his orders dated 2.1.2002 (at Annexure 'D' Page 45) and 25.2.2002 (at Annexure 'D' Page 52-A). In the order dated 2.1.2002, the Commissioner (Appeals) observed that the methodology applied by the Adjudicating Authority in ascertaining the value of mixed denier goods is faulty because he has taken the value of A grade while determining the same and that therefore there is sufficient weight in the appellants' argument that the transaction value in respect of the said goods is in keeping with the nature of the goods i.e. lot of mixed denier of B Grade Yarn. The Commissioner also found that the Adjudicating Authority has not given any example of an identically similar goods, the import of which has been at higher price as compared to the subject goods. Accordingly the order of Deputy Commissioner was found to be not sustainable and therefore the order was set aside and the appeal was allowed with consequential reliefs. For arriving at this finding, the Commissioner also relied on the decision of the Hon'ble Supreme Court in Eicher Tractors Ltd. vs. Commissioner, Customs, Mumbai, 2000 (41) RLT 621, laying down the guidelines as to under which circumstances the transaction value has to be discarded. The Commissioner noted that the Adjudicating Authority in his order-in-original has not mentioned any such circumstances which prompted him to discard the transaction value.

Similar reasoning and finding are given by the Commissioner (Appeals) in the other order dated 25th February 2002 and that other appeal is also allowed with consequential relief.

5. The petitioners' grievance in the present petition is that inspite of the aforesaid orders in favour of the petitioners, the respondents are not permitting the petitioners to clear the goods on payment of duty on the basis of the transaction value. Appropriate directions are, therefore, sought from this

Court by filing the present petitions. The petitioners have also prayed for directing the respondents to issue a detention certificate in favour of the petitioners for the aforesaid goods in question with a prayer to direct the respondents to reimburse the amounts of demurrage, godown and rental charges paid by the petitioners to the Central Warehousing Corporation for the goods in question.

6. In response to the notice issued by this Court, Mr. D.N. Patel, learned Senior Standing Counsel for the Central Government appears for the respondents and points out that the revenue has filed appeals before the CEGAT, Mumbai on 16th April 2002 and that during the pendency of the said appeals and stay applications, no directions may be issued to the respondent authorities in the present petitions, otherwise the appeals filed by the department before the CEGAT may become infructuous.

7. In rejoinder, Mr. Dave, ld. counsel for the petitioners has vehemently submitted that in view of the decision of the Apex Court in Union of India and others vs. Kamlakshi Finance Corporation Ltd., AIR 1992 S.C. 711, the respondents are bound to implement the orders of the appellate authority and filing of an appeal cannot be a ground for depriving the petitioners of the benefits of the appellate orders in their favour. Mr. Dave further points out that the petitioners have received copies of the Memo of Appeal and other papers filed by the Commissioner of Customs, Kandla before the CEGAT in Appeal No. C/372/02-Mum., but the appellant before the CEGAT has not filed any regular stay application and therefore also the respondents cannot be permitted to hold back the benefits of the appellate orders in favour of the petitioners.

8. Having heard the learned counsel for the parties, this Court finds that there is substance in the submissions made by the learned counsel for the petitioners. The petitioners had imported the goods in January/February 2000. The Deputy Commissioner and Assistant Commissioner of Customs had passed the orders for enhancing the value of the goods for the purposes of levying the customs duty. The Commissioner (Appeals) has found fault with the said orders-in-original and has found that the customs duty is required to be levied on the basis of the transaction value and that no case is made out by the Adjudicating Authority for making any exception to that general rule enunciated by the Hon'ble Supreme Court in the case of Eicher Tractors Ltd. (Supra) and that therefore respondents No. 3 and 4 are

bound to comply with the appellate orders.

9. It is true that the department has filed appeals before the CEGAT for challenging the orders of the Commissioner (Appeals). However, from a perusal of the papers which are served on the petitioners herein and shown to us, it appears that the papers contain the grounds of appeal and authorisation. Annexure 'C' contains the following prayer clause,

> "The applicant, prays to the Customs, Excise and Gold (Control) Appellate Tribunal (hereinafter referred as the 'Tribunal') for the correct determination of the following points arising out of the said order :-
>
> Whether after taking into consideration the facts, circumstances and the grounds stated, the said order of the Commissioner (Appeal), Ahmedabad be set aside and pass any other order as deemed fit in the interest of justice. Stay is to be granted against the operation of the order of Commissioner (Appeal)."

but nothing is stated on behalf of the department by way of grounds for interim stay during pendency of the appeal before the CEGAT.

10. However, without being swayed by such lacuna on the part of the department, we are of the view that although the petitioners are entitled to the relief regarding the clearance of the goods on the basis of the orders passed by the appellate authority dated 2nd January 2002 and 25th February 2002, the petitioners' prayer for detention certificate is not required to be considered at this stage and even clearance of goods on the basis of the orders of the appellate authority can be permitted only subject to certain conditions so as to safeguard the interest of the revenue in case the revenue were to succeed in appeals before the CEGAT.

11. In view of the above discussion, the petitions are partly allowed. The respondents are directed to permit the petitioners to clear the goods imported by them under the Bills of Entry No. 301388 dated 1st February 2000 and under the Bills of Entry No. F-11989 dated 6th January 2000 in accordance with the orders-in-appeal dated 2nd January 2002 and 25th February 2002 passed by the Commissioner of Customs (Appeals) [Annexure 'D' colly. to the petition] subject to

compliance with the following terms and conditions :

(i) The petitioners shall submit bonds by way of security for the difference between the duty chargeable as per the orders of the adjudicating authority and the duty to be charged on the basis of the appellate orders;

(ii) The petitioners shall also file separate undertakings in respect of each consignment to the effect that the petitioners shall pay the differential duty along with interest thereon in case the department succeeds in their appeals before the CEGAT against the orders of the appellate authority;

(iii) Respondents No. 3 and 4 shall make assessment of the goods in question on the basis of the appellate orders dated 2nd January 2002 and 25th February 2002 within one month from the date of receipt of writ of this order or certified copy of this order whichever is earlier, and shall permit the petitioners to clear the goods in question within one week from the date of payment of the customs duty by the petitioners.

12. It is clarified that this Court has not entertained the petitioners' prayer in respect of the detention certificate as that prayer may be made after the appeals filed by the revenue before the CEGAT are disposed of finally and therefore it will depend on the outcome of the appeals whether such a prayer could be made or not.

13. Rule is made absolute to the aforesaid extent with no order as to costs.

rmr. [M.S. Shah, J.]

[K.A. Puj, J.]